

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ROBERT BOSUM RHO, M.D.	:	CIVIL ACTION
	:	
v.	:	
	:	
VANGUARD OB/GYN ASSOCIATES, P.C.	:	
and MEDPARTNERS/MULLIKIN, INC.	:	NO. 98-1673

MEMORANDUM AND ORDER

HUTTON, J.

April 15, 1999

Presently before the Court are the Motion for Partial Summary Judgment by Defendants, Vanguard Ob/Gyn Associates, P.C. ("Vanguard") and MedPartners/Mullikin, Inc. ("MedPartners") (collectively, the "Defendants") (Docket No. 6), the Response thereto by Plaintiff, Robert Bosun Rho, M.D. ("Dr. Rho" or "Plaintiff") (Docket No. 10), Defendants' Reply Brief (Docket No. 14), and the Plaintiff's Sur-Reply (Docket No. 19). For the reasons stated below, the Defendants' Motion for Partial Summary Judgment is **GRANTED**.

I. BACKGROUND

Taken in the light most favorable to the nonmoving party, the facts are as follows. Plaintiff, Robert Bosun Rho, M.D. ("Rho") is a medical doctor who practices obstetrics/gynecology. Defendant Vanguard OB/GYN Associates, PC. ("Vanguard") is a Pennsylvania professional corporation with a principal place of

business at One Bala Plaza Suite 429, Bala Cynwyd, Pennsylvania 19004. Defendant MedPartners/Mullikin, Inc. ("MedPartners") is a Delaware corporation with a principal place of business at One Bala Plaza Suite 429, Bala Cynwyd, Pennsylvania 19004.

In August 1996, Dr. Rho contacted Vanguard seeking employment as an obstetrician/gynecologist. (Rho dep. at 20-21.) That same month, Dr. Rho interviewed with Michael Gross, M.D. ("Dr. Gross"), the Medical Director and representative of Vanguard and Stephanie Graff ("Graff"), the MedPartners Credentialing Coordinator. Dr. Rho asserts that he was led to believe that he was being hired by MedPartners, not Vanguard. The correspondences he received from Graff were on MedPartners letterhead. (Rho dep. at 45.) Dr. Gross told him that MedPartners would be his employer. (Gross dep. at 23.)

On September 10, 1996, Dr. Rho signed an employment agreement with Vanguard, under which he was to commence employment on September 16, 1996. (Physician Employment Agreement, the "Employment Agreement.") As explained in Plaintiff's Employment Agreement with Vanguard, MedPartners provided various business, management and operational support to Vanguard, and was Vanguard's designee for all billing and collection services. (Employment Agreement ¶ 2.10.)

On September 14, 1996, Dr. Rho received a letter from the Pennsylvania Bureau of Professional and Occupational Affairs dated

September 6, 1996, notifying him that his medical license was being suspended for ten days starting on November 22, 1996, due to his failure to pay an emergency surcharge to the Pennsylvania Catastrophic Loss Fund ("CAT Fund") of \$5,288.00. In a letter dated September 14, 1996, Dr. Rho informed Dr. Gross of the problem he was having with the CAT Fund and the suspension. Dr. Gross then told Dr. Rho that "MedPartners would be able to give Dr. Rho a loan to pay back to be able to pay the surcharge that was due, so that ... we could avoid having the suspension." (Graff dep. at 41.)

On October 2, 1996, Dr. Gross notified Dr. Rho that his employment was being terminated. (Rho dep. at 30.) In an Order dated December 17, 1996, the Pennsylvania Department of State Before the State Board of Medicine reduced Dr. Rho's suspension from ten to five days and stayed the five-day suspension. (Order dated Dec.17, 1996, by Charles J. Bannon, M.D., Chairman.)

On March 30, 1998, Dr. Rho filed a complaint against Vanguard and MedPartners alleging breach of an employment contract as well as other non-contractual claims based on Pennsylvania common law. The Defendants filed an Answer to Complaint on June 8, 1998. On February 22, 1999, the Defendants filed the instant motion for partial summary judgment regarding Counts I through V of the complaint. On March 18, 1999, the Plaintiff filed a Legal Memorandum in Opposition to Defendants' Motion. The Defendants filed a Reply Brief on March 24, 1999. On March 19, 1999,

however, the Plaintiff filed a First Amended Complaint, which added an additional claim for intentional interference with contractual advantage against MedPartners (Count VI). Because the First Amended Complaint has no relevance to the instant motion, the court now considers Defendants' motion for partial summary judgment.

II. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The party moving for summary judgment has the initial burden of showing the basis for its motion. See Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Once the movant adequately supports its motion pursuant to Rule 56(c), the burden shifts to the nonmoving party to go beyond the mere pleadings and present evidence through affidavits, depositions, or admissions on file to show that there is a genuine issue for trial. See id. at 324. A genuine issue is one in which the evidence is such that a reasonable jury could return a verdict for the nonmoving party. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

When deciding a motion for summary judgment, a court must draw all reasonable inferences in the light most favorable to the

nonmovant. See Big Apple BMW, Inc. v. BMW of N. Am., Inc., 974 F.2d 1358, 1363 (3d Cir. 1992). Moreover, a court may not consider the credibility or weight of the evidence in deciding a motion for summary judgment, even if the quantity of the moving party's evidence far outweighs that of its opponent. See id. Nonetheless, a party opposing summary judgment must do more than rest upon mere allegations, general denials, or vague statements. See Trap Rock Indus., Inc. v. Local 825, 982 F.2d 884, 890 (3d Cir. 1992).

III. DISCUSSION

In their motion, Defendants move the Court for an Order for partial summary judgment, granting them summary judgment on the following claims: (1) Plaintiff's breach of contract claim against MedPartners, as pled in Count I of the Complaint; (2) Plaintiff's claim against both Defendants for fraud in the inducement, as pled in Count II of the Complaint; (3) Plaintiff's claim against both Defendants for negligent misrepresentation, as pled in Count III of the Complaint; (4) Plaintiff's claim against both Defendants for promissory estoppel, as pled in Count IV of the Complaint; and (5) Plaintiff's claim for breach of the covenant of good faith and fair dealing, as pled in Count V of the Complaint. The Court considers each of Plaintiff's claims in turn.

A. Breach of Contract (Counts I)

In Count I of the complaint, the Plaintiff asserts a

breach of contract claim against Vanguard and MedPartners. The basis of this claim is the Physician Employment Agreement entered into on September 10, 1996, between the Plaintiff and Vanguard. Plaintiff contends that although MedPartners is not named as a party to the agreement, MedPartners and Vanguard are a single employer and an integrated enterprise. The Plaintiff concludes, therefore, that MedPartners, as well as Vanguard, is liable under the agreement. The Plaintiff concedes, however, that no binding authority exists to support this contention.

In the present motion, the Defendants contend that summary judgment is proper on the breach of contract claim against MedPartners because (1) MedPartners was not a party to the employment agreement with Dr. Rho and (2) the specific terms of the agreement precludes the Plaintiff from seeking recovery from MedPartners. (Defs.' Mot. at 4.) This Court must agree.

In order to prove a breach of contract under Pennsylvania law, a plaintiff must show: (1) the existence of a valid and binding contract to which the plaintiff and defendants were parties; (2) the contract's essential terms; (3) that plaintiff complied with the contract's terms; (4) that the defendant breached a duty imposed by the contract; and (5) damages resulting from the breach. See Gundlach v. Reinstein, 924 F. Supp. 684, 688 (E.D. Pa. 1996) (listing elements required in breach of contract case between university and student), aff'd without op., 114 F.3d 1172 (3d Cir.

1997).

Page one (1) of the agreement defines Dr. Rho as the "Employee" and Vanguard as the "Employer." Section 2.10 of the agreement explains the relationship between Vanguard and MedPartners, and provides in full that:

Relationship with MedPartners: Employee acknowledges that Employer has contracted with MedPartners for the provision of certain services in connection with the business, management and operations of the Practice and that MedPartners is Employer's designee for all billing and collection services. Simultaneously with the execution of this Agreement, Employee executes the Power of Attorney attached hereto as Exhibit D and made a part hereof. If any provisions of Exhibit D conflict with any other provisions of the Agreement, the provisions of Exhibit D shall control. Employee agrees that he or she will cooperate with Employer in the performance of Employer's obligations to MedPartners. However, Employee and Employer agrees that Employer is solely responsible to Employee for the performance of Employer's obligations under this Agreement, including, but not limited to, the payment of compensation to Employee, and Employee acknowledges and agrees to look solely to Employer for the performance of such obligations.

(Physician Employment Agreement § 2.10.) Under the plain language of the contract, MedPartners is not a party to the agreement. Thus, Plaintiff fails to establish as a matter of law the first essential element of a claim for breach of contract.

The Plaintiff's reliance on NLRB v. Browning-Ferris Indus., 691 F.2d 1117 (3d Cir. 1982) is misguided. In Browning Ferris, the sole issue on appeal was whether Browning Ferris Industries of Pennsylvania, Inc. ("BFI") was a "joint employer" within the meaning of the National Labor Relations Act ("NLRA").

See Browning-Ferris, 691 F.2d at 1119. The Court explained at length the conceptual differences between a "single employer" and a "joint employer" in a case arising under the NLRA. See id. at 1122-23. The single employer and joint employer tests, as characterized in Browning-Ferris, have often been applied to employment discrimination actions. See, e.g., Switalski v. Local Union No.3 of Int'l Assoc. of Bridge Structural and Ornamental Ironworkers, 881 F. Supp. 205, 207-08 (W.D. Pa. 1995) (ADA case); Doe v. William Sapiro, Esq., P.C., 852 F. Supp. 1246, 1249 (E.D. Pa. 1994) (ADA case); Shepherdson v. Local Union No. 401 of Int'l Assoc. of Bridge Structural and Ornamental Ironworkers, 823 F. Supp. 1245, 1250 (E.D. Pa. 1993). The analysis set forth in Browning-Ferris, however, has never been applied to breach of contract claims.

Moreover, the Plaintiff agreed by contract to look only to Vanguard for performance of the contractual obligations, and expressly agreed not to look to MedPartners. The language in section 2.10 expresses the parties' clear intent that MedPartners not be liable to Plaintiff for any claim arising under the contract. Further support for MedPartners' position comes from the integration clause in section 6.05 of the agreement, which states in full that:

Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto and supersedes any and all other agreements, whether oral or written, with respect to the subject matter contained herein.

(Physician Employment Agreement § 6.05.) Accordingly, summary judgment should be granted in MedPartners' favor on Plaintiff's breach of contract claim.

B. Fraud in the Inducement (Count II)

In Count II, the Plaintiff alleges a claim against both Vanguard and MedPartners for fraud in the inducement. The Plaintiff contends that Dr. Gross, Vanguard's Medical Director, and Stephanie Graff, MedPartners' Credentialing Coordinator, assured him that his "problems" with the CAT Fund would not interfere with his employment with Vanguard. (Pl.'s Compl. ¶¶ 21-24, 29.) Plaintiff claims that in reliance on those alleged assurances by Dr. Gross and Graff, he accepted employment with Vanguard and turned down an offer of employment with a Dr. Jean La Mothe. (Id. ¶¶ 21-24, 29, and Ex.C to Compl.) In their motion, the Defendants raise essentially two issues. First, the Defendants claim that Dr. Rho cannot establish that he had any loss as a result of the alleged fraudulent inducement. Second, the Defendants contend that the Plaintiff cannot establish that any reliance by him on the Defendants' alleged verbal representations was reasonable. Because the Court finds that the Plaintiff cannot establish reasonable reliance on the Defendants' alleged assurances, this Court need not consider Defendants' first argument.

Several courts have addressed the issue of what

constitutes a "reasonable reliance" when parties enter into a final contract which contains an integration clause which negates all previous negotiated agreements. In One-O-One Enterprises, Inc. v. Caruso, 848 F.2d 1283, 1287 (D.C. Cir. 1988), the court held that integration clauses which stated that the Final Agreement "supersede[d] any and all previous understandings and agreements" was valid, unless the plaintiff successfully alleged that he was fraudulently induced into signing the contract. However, "a party with the capacity and opportunity to read a written contract, [who has] execute[d] it, not under any emergency, and whose signature was not obtained by trick or artifice" cannot attempt to invalidate the written contract, or plead fraud in the inducement. Id., quoting, Management Assistance, Inc. v. Computer Dimensions, Inc., 546 F. Supp. 666, 671-72 (N.D. Ga. 1982), aff'd mem. sub nom., Computer Dimensions, Inc. v. Basic Four, 747 F.2d 708 (11th Cir.1984).

In this case, section 4.02 of the agreement provides in pertinent part that:

Termination. Notwithstanding Section 4.01, this Agreement may be terminated early:

... (b) Immediately upon notice from Employer, upon the placing or imposing of any restrictions or limitations upon Employee by any governmental authority or private body having jurisdiction over Employee so that (i) Employee cannot engage fully in the professional medical service for which Employee was employed or (ii) Employer cannot obtain reimbursement or otherwise be compensated for Employee's services;

(Physician Employment Agreement § 4.02.) Thus, pursuant to the unambiguous language of the contract, a suspension of Dr. Rho's medical license, which by definition would render him unable to "engage fully in the professional medical service for which [he] was employed," would constitute grounds for his immediate termination. As a medical doctor, Dr. Rho had the capacity to read and understand the agreement. Furthermore, Dr. Rho does not allege that he signed the agreement under any emergency, or that his signature was obtained by trick or artifice. In view of this language and the integration clause in section 6.05 quoted previously, any reliance by Dr. Rho on Dr. Gross's or Graff's alleged "assurances" would be unreasonable as a matter of law. Accordingly, the Court grants the motions for summary judgment on Count II for both parties.

C. Negligent Misrepresentation (Count III)

In Count III, the Plaintiff alleges a claim against both Vanguard and MedPartners for negligent misrepresentation, based again on the misrepresentation and assurances allegedly made to him by Dr. Gross and Graff. In their motion, the Defendants raise two issues regarding this cause of action. First, the Defendants contend that the language in sections 4.02 and 6.05 bars Plaintiff's negligent misrepresentation claim. Second, the Defendants allege that the "economic loss doctrine" precludes a plaintiff from recovering economic losses. Again, the Court finds

the Defendants' argument regarding the language in sections 4.02 and 6.05 persuasive, thus it need not consider the Defendants' other argument.

The elements which negligent and fraudulent misrepresentation have in common are false information, justifiable reliance, causation, and pecuniary loss. See Browne v. Maxfield, 663 F. Supp. 1193, 1202 (E.D. Pa. 1987) (applying Pennsylvania law). For the reasons stated above, the Court finds that the language in sections 4.02 and 6.05 bars Plaintiff's claim for negligent misrepresentation against both Defendants. See supra Part II.B.

D. Promissory Estoppel and Detrimental Reliance (Count IV)

In Count IV, the Plaintiff asserts a claim of promissory estoppel and detrimental reliance, again based on the allegedly false assurances by Dr. Gross and Graff mentioned previously. In their motion, the Defendants raise just one issue regarding this cause of action. The Defendants claim that since an enforceable contract exists in this case, promissory estoppel does not apply. This Court must agree.

"Promissory estoppel is an equitable remedy to be implemented only when there is no contract; it is not designed to protect parties who do not adequately memorialize their contracts in writing." Iverson Baking Co., Inc. v. Weston Foods, Ltd., 874 F. Supp. 96, (E.D. Pa. Jan. 25, 1995). Because promissory estoppel

is a quasi-contract equitable remedy, it is "invoked in situations where the formal requirements of contract formation have not been satisfied and where justice would be served by enforcing a promise." Carlson v. Arnot-Ogden Memorial Hosp., 918 F.2d 411, 416 (3d Cir.1990). Therefore, when the parties have formed an enforceable contract, "relief under a promissory estoppel claim is unwarranted." Id.

In this case, an enforceable contract exists between the Plaintiff and Vanguard. Indeed, as this Court has already noted, the contract not only provided the terms under which Vanguard could or could not terminate Plaintiff's employment, but also contained a provision that states that the Plaintiff would look only to Vanguard for performance of its obligations under the contract. Furthermore, the contract contained in section 6.05 an integration clause, which bars the Plaintiff's attempt to circumvent the termination provisions in section 4.02(b) of the agreement. Accordingly, summary judgment is appropriate for the promissory estoppel claims against both Defendants.

E. Good Faith and Fair Dealing (Count V)

In Count V, the Plaintiff asserts a claim for breach of the covenant of good faith and fair dealing, again based on the allegedly false assurances by Dr. Gross and Graff mentioned previously. In their motion, the Defendants raise just one issue regarding this cause of action. The Defendants claim that the

existence of an enforceable contract in this case renders the Plaintiff's claim for breach of the covenant of good faith and fair dealing inapplicable. The Court agrees with the Defendants' argument as it relates to Vanguard; nonetheless, summary judgment is warranted against MedPartners for other reasons.

The duty to act in good faith and deal fairly arises from the parties' contractual relationship. See, e.g., Engstom v. John Nuveen & Co., Inc., 668 F. Supp. 953, 957-58 (E.D. Pa. 1987); see also Somers v. Somers, 613 A.2d 1211, 1213 (Pa.Super 1992). "Every contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement. Restatement (Second) of Contracts, § 205 (1982). This duty, however, has been recognized in limited circumstances. See Parkway Garage, Inc. v. City of Philadelphia, 5 F.3d 685, 701 (3d Cir. 1993). In Parkway, the Third Circuit stated that "[u]nder Pennsylvania law, every contract does not imply a duty of good faith." Id. The Court dismissed Parkway's claim for breach of good faith and fair dealing because "Parkway could seek relief under an established cause of action." Id. The Court noted that the allegations concerning the claim for breach of good faith were identical to the plaintiff's other cause of action. Id. Similarly, in this case, Dr. Rho has a viable claim for breach of contract against Vanguard. Moreover, the underlying facts of his claim for breach of good faith and fair dealing are identical to his claim for breach of contract.

Accordingly, Count V of the Plaintiff's complaint is dismissed against Vanguard.

Conversely, in the context of employment contracts, Pennsylvania law does not recognize a cause of action for breach of the implied covenant of good faith and fair dealing, where a valid contract does not exist. McGrenaghan v. St. Denis School, 979 F. Supp. 323, 328 (E.D. Pa. 1997). In the instant action, this Court has already found that an employment contract did not exist between the Plaintiff and MedPartners. Accordingly, the Plaintiff's claim for breach of the covenant of good faith and fair dealing is dismissed against MedPartners.

An appropriate Order follows.

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and MEDPARTNERS/MULLIKIN, INC.	:	NO. 98-1673

O R D E R

AND NOW, this 15th day of April, 1999, upon consideration of the Motion for Partial Summary Judgment by Defendants, Vanguard Ob/Gyn Associates, P.C. ("Vanguard") and MedPartners/Mullikin, Inc. ("MedPartners") (collectively, the "Defendants") (Docket No. 6), the Response thereto by Plaintiff, Robert Bosun Rho, M.D. ("Dr. Rho" or "Plaintiff") (Docket No. 10), Defendants' Reply Brief (Docket No. 14), and the Plaintiff's Sur-Reply (Docket No. 19), IT IS HEREBY ORDERED that the Defendants' Motion for Partial Summary Judgment is **GRANTED**.

IT IS FURTHER ORDERED that:

(1) Count I of Plaintiff's complaint is **DISMISSED** against MedPartners;

(2) Count II of Plaintiff's complaint is **DISMISSED** against both Vanguard and MedPartners;

(3) Count III of Plaintiff's complaint is **DISMISSED** against both Vanguard and MedPartners;

(4) Count IV of Plaintiff's complaint is **DISMISSED** against both Vanguard and MedPartners; and

(5) Count V of Plaintiff's complaint is **DISMISSED** against both Vanguard and MedPartners.

BY THE COURT:

HERBERT J. HUTTON, J.